

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Judyann Bentick	Team: Team # 8	CCRB Case #: 200408139	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/08/2004 3:45 AM	Location of Incident: Lincoln Avenue and Edna Street	Precinct: 75	18 Mo. SOL 1/8/2006	EO SOL 1/8/2006	
Date/Time CV Reported Thu, 08/19/2004 3:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/23/2004 12:19 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Daniel Miraglia	00000	913785	075 PCT
2. POM Brian Champion	02983	905937	075 PCT
3. POM Andre Rosa	10430	929082	075 PCT
4. POM Simon August	19606	927878	075 PCT
5. POM Kevin Phelan	05648	919558	075 PCT
6. POM David Earley	10720	906168	075 PCT
7. An officer			075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Earley	Abuse: PO David Earley damaged § 87(2)(b) s and § 87(2)(b) s property.	
B.LT Daniel Miraglia	Force: LT Daniel Miraglia used physical force against § 87(2)(b)	
C.POM Brian Champion	Force: Brian Champion used physical force against § 87(2)(b)	
D.POM David Earley	Force: David Earley used physical force against § 87(2)(b)	
E. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
F.POM Andre Rosa	Force: PO Andre Rosa used physical force against § 87(2)(b)	
G.POM Simon August	Force: PO Simon August used physical force against § 87(2)(b)	
H.POM Kevin Phelan	Force: PO Kevin Phelan used physical force against § 87(2)(b)	

### Synopsis

On June 8, 2004, at 3:45am, § 87(2)(b) and § 87(2)(b) fled from police in their car and were eventually stopped on Lincoln Avenue and Edna Street in Brooklyn. § 87(2)(b) alleged that a plainclothes officer damaged the passenger side window with a walkie-talkie, grabbed him out of his car, slammed him on the ground and with the assistance of another plainclothes officer began kicking him in his back, neck, ribs and chest. The first officer then placed his foot on § 87(2)(b)'s neck as they waited for § 87(2)(b) who had taken flight. After § 87(2)(b) was handcuffed, an officer threatened to hit him with his radio if he tried to escape.

§ 87(2)(g)

### Summary of Complaint

On August 13, 2005, § 87(2)(b) wrote Police Commissioner Raymond Kelly (encl.3A-B) alleging unspecified police misconduct. On August 19, 2004, she filed a complaint on behalf of her son with the Internal Affairs Bureau. (Encl. 4A-B) § 87(2)(b) claimed that officers ran up to her son's vehicle and threatened to shoot if he or his friend moved. She mentioned that her son sustained scratches to his neck and both knees. The complaint was referred to the CCRB on August 23, 2005. (Encl. 5A-B) § 87(2)(b) was not interviewed because she did not witness the incident.

§ 87(2)(b) is a 5'9", 136 pound, § 87(2)(b)-old, Hispanic male with black hair and black eyes. On § 87(2)(b), § 87(2)(b) visited § 87(2)(b) (Encl.28A-) and complained of lower back pain. § 87(2)(b) said that two weeks prior to the visit, he and a friend were stopped by officers and beaten up "all over." On § 87(2)(b), § 87(2)(b) had a follow-up visit. (Encl. 28B) He told his doctor that he was experiencing headaches which started after he was stopped and assaulted by officers. § 87(2)(b) added that he was thrown onto his back and kicked in his back. § 87(2)(b) said that his head and back pain improved.

On August 25, 2004, the undersigned contacted § 87(2)(b) at which time he provided a brief statement (encl.8) § 87(2)(g) (encl. 9A-C). The only difference was his claim that three plainclothes officers approached the vehicle after they stopped and assaulted him. His statements are summarized below.

On July 8, 2004, at 3:45am, § 87(2)(b) was driving § 87(2)(b) home in their shared 1987 brown Acura Legend. § 87(2)(b) drove down Atlantic Avenue and stopped at a red light on Fulton Street when he noticed a patrol vehicle with two uniformed White male officers, PO 1 and PO 2 behind him. § 87(2)(b) woke § 87(2)(b) and told him that he was being followed. There was a community service warrant out for § 87(2)(b) so he drove away. § 87(2)(b) began speeding and committed various traffic infractions. He also drove on the sidewalk in an attempt to evade the officers. The officers requested back up and numerous officers joined in the pursuit. The officers chased them for approximately a half-hour and stopped them on Lincoln Avenue, which is a one way street between Jamaica Avenue and Edna Street. § 87(2)(b) admitted that § 87(2)(b) was drunk, but insisted that § 87(2)(b) fled because he was scared, not because he was intoxicated. § 87(2)(b) had also been drinking.

§ 87(2)(b) left the vehicle and ran into a building. PO 1, PO 2 and another uniformed officer, PO 3, followed § 87(2)(b). § 87(2)(b) later told § 87(2)(b) that the officers stopped him on the first floor of a building and punched him numerous times. § 87(2)(b) told § 87(2)(b) that he fought with the officers for approximately three minutes.

Two plainclothes officers, PO 4 and PO 5, who drove a black impala, approached the passenger side of the vehicle with PO 2. PO 4 broke the passenger window with a walkie-talkie. (**Allegation A**) § 87(2)(b) did

not suffer any injuries. PO 4 opened the car door, pulled § 87(2)(b) out and body slammed him onto the ground. **(Allegation B)** The officers kicked him approximately ten times on his back, his neck, his ribs and chest. **(Allegation C and D)** § 87(2)(b) cursed at the officers as they struck him, but denied struggling with the officers. The officers turned § 87(2)(b) onto his back and searched him.

After § 87(2)(b) was handcuffed, PO 4 turned § 87(2)(b) onto his stomach and placed his foot on § 87(2)(b)'s neck. PO 4 kept his foot on § 87(2)(b)'s neck for approximately ten seconds as they waited for the officers to bring back § 87(2)(b). Earlier in the interview, § 87(2)(b) claimed that PO 2 handcuffed him and threatened to “break his face” with his walkie-talkie if he tried to run. **(Allegation E)**

Shortly after, § 87(2)(b) saw uniformed officers walking out of a building with § 87(2)(b) § 87(2)(b) appeared disheveled and was sweating and limping. After the officers placed § 87(2)(b) in a patrol car, they lifted § 87(2)(b) off the ground. § 87(2)(b) felt pain in his neck and back, but he did not request medical attention at the scene or at the stationhouse.

At the precinct, § 87(2)(b) requested medical attention, but was ignored by PO 4 and the desk officer. PO 6 told § 87(2)(b) that if his warrant check was negative, he would be released with a summons. § 87(2)(b) believed that PO 6 was also on the scene, but did not believe that the officer played a role in the incident. § 87(2)(b) was released with a § 87(2)(b) summons and later sought treatment with a private doctor.

§ 87(2)(b) described the officers as follows:

PO 1 is a clean-shaven, White officer with short brown hair. He has a pale complexion and is approximately forty to forty-five years old.

PO 2 is a short White male with short spiky hair, a husky build and blue eyes. He had pimples on his face and appeared to be a rookie approximately twenty to twenty-five years old.

PO 3 is a Black, chubby male officer with cornrows, glasses and a dark complexion.

PO 4 is a tall, clean-shaven, Hispanic male officer approximately 6'0 with skinny long arms. He has a skinny face, black eyes, black straight hair that was combed back and big lips. He was wearing an orange striped shirt, blue jeans and sneakers.

PO 5 is a 5'6", skinny, White male with black spiky hair. He has a pale complexion and was wearing a white shirt, shorts and sneakers.

PO 6 is a White male 5'10", clean-shaven with blue eyes, black spiky hair. His hairline is in the shape of the letter M.

On February 8, 2005, § 87(2)(b) viewed six officer photos: PO David Earley, PO Andre Rosa, PO Simon August, PO Kevin Phelan and Lt. Daniel Miraglia. § 87(2)(b) identified Lt. Miraglia as the officer that pulled him out of the car, slammed him on the ground, and hit and kicked him repeatedly. § 87(2)(b) did not recognize the other officers. (Encls. 12A-G)

§ 87(2)(b)

§ 87(2)(b) is a 5'9", § 87(2)(b)-old, 250 pound, Hispanic male with black hair and brown eyes. On July 8, 2004, § 87(2)(b) was examined at his pre-arraignment where he denied being sick or injured. (Encl. 13A-D) On September 16, 2004, § 87(2)(b) was interviewed at the Riker's Island Correctional Facility. § 87(2)(g)

When § 87(2)(b) stopped the car and fled, PO 1 broke the passenger side window with a flashlight and heard § 87(2)(b) screaming. Approximately six officers chased § 87(2)(b) and caught up with him in the middle of the block. PO 2 hit § 87(2)(b) with his forearm. When § 87(2)(b) stumbled back, PO 3 tripped § 87(2)(b). These two officers and four additional officers grabbed § 87(2)(b) and dragged him to the ground. § 87(2)(b) was punched three times in the head, kicked twice in the groin area, and also hit in the ribs. **(Allegation F, G, H)** The officers also cursed at him. § 87(2)(b) did not know who hit him. A lieutenant was present as he was being assaulted. § 87(2)(b) denied resisting or struggling with the officers. § 87(2)(b) was handcuffed, placed into a car, and transported to the precinct.

At the stationhouse, § 87(2)(b) saw § 87(2)(b) § 87(2)(b) was bleeding from his nose and complained of a headache. § 87(2)(b) believed that § 87(2)(b) asked for medical attention, but he was not certain. § 87(2)(b) did not request medical attention at the stationhouse and was later treated at Central Booking. § 87(2)(b) admitted that he and § 87(2)(b) consumed approximately 3 to 4 drinks, but denied being intoxicated.

§ 87(2)(b) described the officers as:

PO 1 is a Hispanic uniformed officer, chubby with black hair, approximately 5'9"-6'2".

PO 2 is a White uniformed officer, short, bald, with tattoos on his arm.

PO 3 is a Hispanic uniformed officer, skinny, approximately 6'5".

From December 20, 2004 to March 3, 2005, three please call letters and four calls were placed to § 87(2)(b) § 87(2)(b)'s home phone number to schedule an officer photo viewing. To date, § 87(2)(b) has not contacted the undersigned. (Encls. 36F-J)

#### **Attempts to Contact Other Witnesses (Encl. 14)**

On September 28, 2004, a canvass of the incident location was conducted. The undersigned spoke with the residents of § 87(2)(b) the attendants of two delis in the area, a group of children playing on the block and three-day laborers. None of these individuals recalled the incident and often confused it with other crimes that had occurred in the area.

Please call letters were sent to various building adjacent to and in close proximity to the stop location. (Encl. 36D) On October 7, 2005, § 87(2)(b) called after receiving a please call letter. She stated that she did not observe this incident and was asleep. (Encl.36D)

#### **Results of Investigation**

#### **SPRINT (Encl. 32A-B)**

At 2:57am a 10-10V2(possible crime vehicle) was called. Sector C arrived at 2:58am, 75LT arrived at 2:59am, and Sector J arrived at 3:19am.

#### **Police Officer Statement**

##### PO Brian Champion

In his aided report (encl. 15A-E), PO Champion stated that he suffered an injury to his right knee while apprehending a perpetrator. In the property clerk's motor vehicle/boat invoice (encl.17) prepared on July 8, 2004, PO Champion indicated that the car had numerous dents/scratches and a broken driver side window. On July 8, 2004, PO Champion issued a § 87(2)(b) summons (encl. 18) to § 87(2)(b) for engaging in violent, tumultuous or threatening behavior.

PO Champion is a 5'11", § 87(2)(b)-old, 180 pound, White male with black hair and brown eyes. He was interviewed at the CCRB on September 13, 2004 (encl. 19A-E). PO Champion worked with PO David Earley in a marked patrol vehicle. They were assigned to sector CD. As they were driving on Fulton Street on July 8, 2004, they observed § 87(2)(b) swerving in and out of traffic at a high rate of speed. PO Champion drove behind § 87(2)(b) put on his siren and attempted to pull the car over on Crescent Avenue. § 87(2)(b) fled. PO Champion radioed his observations and numerous patrol vehicles responded. During the pursuit, § 87(2)(b) committed numerous traffic violations. He almost rammed into other patrol vehicles and nearly hit Lt. Miraglia, who was on foot directing traffic. Lt. Miraglia jumped out of the car's path and was not injured. No officers were injured during the vehicle pursuit. The chase lasted about ten minutes and ended on Lincoln Avenue and Edna Street when § 87(2)(b) tried to enter a one way street.

When § 87(2)(b) could not enter the street, he stopped the vehicle and ran. PO Champion got out of his vehicle and accidentally twisted his knee and ankle because the street was narrow. PO Earley also sprained his ankle. PO Champion lifted himself up and walked to the passenger side of the vehicle. PO Champion insisted that his injury did not result from overcoming an assault and explained that the remark in the BADS report was probably a general entry inclusive of the three officers that were injured.

When they approached § 87(2)(b) he was yelling and cursing. PO Champion observed numerous dents and scratches on the vehicle. PO Champion vouchered the vehicle and indicated on the report that there were numerous scratches and dents. Since the report was unavailable at the time of the interview, he could not recall any additional remarks he included. Nevertheless, PO Champion denied that he or any other officers struck the window with a radio.

PO Champion and PO Earley opened the passenger door, which was already open, and removed § 87(2)(b) by his shoulders. No other officers assisted them, but there were five other officers present. § 87(2)(b) continued yelling and cursing as he stepped out and began flailing his arms. § 87(2)(b) was handcuffed standing up; he was never placed on the ground. PO Champion did not recall whether he or his partner handcuffed § 87(2)(b). § 87(2)(b) never complained of injuries and did not have any noticeable injuries. PO Champion acknowledged frisking § 87(2)(b) but denied searching inside of his pockets. PO Champion was the only officer that frisked § 87(2)(b) at the scene.

After § 87(2)(b) was handcuffed, PO Champion approached § 87(2)(b) and placed him into his patrol vehicle. § 87(2)(b) was just sweating and appeared disheveled. Aside from perspiration, there was nothing wrong with § 87(2)(b). § 87(2)(b) did not request medical attention nor did he claim any injuries at the scene or in the stationhouse.

#### PO David Earley

PO Early is a 5'9", § 87(2)(b)-old, 160 pound, White male with black hair and blue eyes. He was interviewed at the CCRB on March 8, 2005. (Encl. 20A-E) PO Early was in uniform and was working with PO Champion. § 87(2)(g) PO Early claimed that he and Lt. Miraglia were the only officers by the vehicle and the only officers that dealt with § 87(2)(b). PO Early admitted to breaking the driver side window as Lt. Miraglia was trying to open the passenger side door. As he was breaking the window, Lt. Miraglia opened the door and handcuffed § 87(2)(b).

#### Lt. Daniel Miraglia

Lt. Daniel Miraglia is a 6'2", 200 pound, White male with black hair and brown eyes. He was interviewed at the CCRB on October 13, 2004 (encl. 21A-D). Lt. Miraglia was working alone as the Special Operations Lieutenant and was assigned to administrative duty. He was dressed in plainclothes. A call came over the radio from a sector that was engaged in a vehicle pursuit. Lt. Miraglia did not recall which sector placed the call. Lt. Miraglia and PO Kevin Phelan, who was the operator, left the stationhouse in an unmarked vehicle. They were the only officers with an unmarked vehicle at the scene. When Lt. Miraglia arrived at the scene PO Phelan ran after § 87(2)(b) and Lt. Miraglia approached the passenger side of the car and tried to open the door. § 87(2)(b) held the door closed with both hands. Lt. Miraglia did not recall if the window was opened or closed and he did not recall if the window was broken. Lt. Miraglia denied striking the window with a radio or with his fist. Lt. Miraglia eventually forcibly pulled the door open and told § 87(2)(b) to get out of the car numerous times, but § 87(2)(b) refused to get out. Lt. Miraglia grabbed § 87(2)(b) did not recall where, and placed him face down onto the ground. According to Lt. Miraglia, it was safer to place § 87(2)(b) on the ground than stand him up. Lt. Miraglia denied that he or any other officers body slammed § 87(2)(b) onto the ground, kicked him or placed his foot on the back of § 87(2)(b)'s neck. § 87(2)(b) was yelling, but he stopped resisting. Lt. Miraglia did not recall whether he used profanity. A uniformed officer assisted Lt. Miraglia in handcuffing § 87(2)(b). Lt. Miraglia did not recall whether PO Earley or PO Champion was the assisting officer, he believed that they chased § 87(2)(b). After § 87(2)(b) was handcuffed, he was lifted off the ground. Lt. Miraglia directed the officer that assisted him to assist the other officers in apprehending § 87(2)(b). Lt. Miraglia did not hear any officers threaten to hit § 87(2)(b) with a radio. Lt. Miraglia waited with § 87(2)(b) until the other officers brought back § 87(2)(b). Lt. Miraglia believed that PO August, PO Rosa, PO Champion and PO Earley went after § 87(2)(b).

According to Lt. Miraglia, PO Earley, PO August and PO Rosa were injured while running down the block or while fighting with § 87(2)(b). § 87(2)(b) was not injured. Lt. Miraglia spoke briefly with § 87(2)(b) at the scene about the vehicle, Lt. Miraglia did not recall if § 87(2)(b) complained of any injuries.

or asked to go to the hospital. Lt. Miraglia saw § 87(2)(b) and § 87(2)(b) in the stationhouse. He did not recall if they requested medical attention.

#### PO Kevin Phelan

PO Phelan is a 5'10", § 87(2)(b)-old, 200 pound, White male with brown hair and blue eyes. In his aided report (encl. 22A-E), PO Phelan stated that he received a contusion to his right arm when perpetrator slammed a door on his arm. He also received an abrasion to his left knee while attempting to place perpetrator under arrest.

PO Phelan was interviewed at the CCRB on December 28, 2004 (encl. 23A-D). PO Phelan was working with Lt. Miraglia and was dressed in plainclothes. PO Phelan and Lt. Miraglia were inside of the stationhouse when they learned of the vehicle pursuit. He and Lt. Miraglia followed the radio transmissions. As they approached Logan Street and Liberty Avenue, they saw a dark color vehicle driving towards them with numerous patrol vehicles closely chasing behind. PO Phelan placed his vehicle in the middle of the street to block off § 87(2)(b). PO Phelan walked to the back of the vehicle and Lt. Miraglia stood on the sidewalk. § 87(2)(b) drove onto the sidewalk nearly hitting Lt. Miraglia; Lt. Miraglia jumped out of the way. PO Phelan got back into the vehicle and drove southbound on Logan Street towards Liberty Avenue. They continued to listen to the radio transmissions because they had lost sight of the vehicle. On Edna Street, they saw § 87(2)(b) driving at a high rate of speed. § 87(2)(b) was ignoring traffic lights and traveling northbound on Lincoln Avenue, which is a southbound street going one way. A civilian vehicle driving southbound on Lincoln Street prevented § 87(2)(b) from continuing down the street. Since an RMP was behind § 87(2)(b) he was blocked off. § 87(2)(b) got out of his vehicle and ran approximately six buildings down. PO Phelan followed § 87(2)(b). PO Phelan observed § 87(2)(b) enter the vestibule of a building. § 87(2)(b) slammed the door on PO Phelan's arms and began applying pressure by pressing his body against the door. PO Andrew Rosa and PO Simon August appeared and pushed the door open. § 87(2)(b) fell against a locked door that led into the actual building and PO Rosa and PO Phelan fell onto the floor. § 87(2)(b) jumped on PO Rosa's back. PO Phelan jumped on top of § 87(2)(b) and tried to handcuff him. § 87(2)(b) punched, kicked and elbowed PO Phelan. PO Phelan did not know if § 87(2)(b) struck PO Rosa. PO Phelan was hit in his chest. PO Phelan held § 87(2)(b)'s hands in order to restrain him and prevent him from grabbing their weapons. PO August was also trying to restrain § 87(2)(b). PO Phelan did not see any officers strike § 87(2)(b) and doubted that he punched § 87(2)(b).

§ 87(2)(b) was cursing and yelling. § 87(2)(b) said, "fuck you, you fucking bitches." Somehow, § 87(2)(b) got up and pushed the officers off of him. They got control of § 87(2)(b) but as they were taking him out of the building, he continued to resist. Because of § 87(2)(b)'s weight, § 87(2)(b) and the officers fell down approximately five steps. § 87(2)(b) landed on his stomach giving the officers the opportunity to subdue and handcuff him. PO Phelan did not recall who actually handcuffed § 87(2)(b). The struggle with § 87(2)(b) lasted less than five minutes. After § 87(2)(b) was handcuffed, he began cursing, but became compliant as they walked him down the street. PO Phelan did not observe any injuries on § 87(2)(b) and § 87(2)(b) did not complain of any injuries. PO Phelan handed § 87(2)(b) to two officers whose name PO Phelan did not recall.

According to PO Phelan, PO Rosa and PO August were the only officers that followed and assisted in subduing § 87(2)(b). PO Phelan experienced pain, bruising and suffered a contusion as a result of the § 87(2)(b) slamming the door on his arm. He went to § 87(2)(b) and took line of duty, but did not lose work. PO Rosa and PO August also suffered injuries.

#### PO Andre Rosa

PO Rosa is a 5'11", § 87(2)(b)-old, 220 pound Hispanic male with black hair and brown eyes. In the aided report (encl. 24A-E), PO Rosa stated that he suffered multiple bruises, lacerations and swelling while trying to effect an arrest.

PO Rosa was interviewed at the CCRB on December 28, 2004 (encl. 25A-E). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) PO Rosa explained that when they fell, § 87(2)(b) jumped on top of him and began hitting him. PO Rosa did not observe any injuries on § 87(2)(b) and he did not hear § 87(2)(b) complain of any injuries. All of PO Rosa's injuries resulted from falling on the ground.

#### PO Simon August

PO August is a 5'10", § 87(2)(b)-old, 230 pound White male with black hair and brown eyes. In his aided report (encl. 26A-E), PO August stated that he received pain, swelling and a contusion to his body when placing the perpetrator under arrest. PO August was interviewed at the CCRB on February 22, 2004 (encl. 27A-E). § 87(2)(g)

PO August did not recall § 87(2)(b) falling onto the floor and believed that § 87(2)(b) was taken to the ground, but did not recall by whom. PO August stated that he struggled to get § 87(2)(b)'s hand to handcuff them. PO August did not observe any injuries on § 87(2)(b) and did not recall if he complained of any. PO August denied punching, kicking or cursing at § 87(2)(b). He also did not observe the other officers commit these acts. PO August stated that he obtained his injuries while trying to arrest § 87(2)(b) who was resisting.

#### **Medical Records**

§ 87(2)(b)

§ 87(2)(b) Medical Records (Encl. 29A-C)

A x-ray of § 87(2)(b)'s cervical spine, thoracic spine and lumbar spine in regards to his complaint of neck and back pain found no deformities or abnormalities. The clinical impressions were mild scoliosis to the thoracic and lumbar spine and a normal reading for the cervical spine. Regarding the complaints of headaches and pain, a study of the posterior fossa and brain found no abnormalities and the clinical impression was normal.

#### **Police Documents**

##### Roll Call (Encl. 33A-F)

The roll call shows that PO Earley and PO Champion were assigned to sector CD, PO August and PO Rosa were assigned to sector JN and PO Phelan was noted as being present during the tour, his assignment was not listed.

##### Command Log (Encl. 34A-B)

Both § 87(2)(b) and § 87(2)(b) were listed in apparently normal condition.

#### **Disposition of Civil Lawsuit**

§ 87(2)(b) and § 87(2)(b) filed a notice of claim for \$5,000,000 for compensatory damages and \$5,000,000 for punitive damages. § 87(2)(b) is claiming personal injuries, false arrest and assault and § 87(2)(b) is claiming loss of services. (Encl.) The status of § 87(2)(b)'s civil claim is unclear. The Law department searched by name and date of incident for § 87(2)(b)'s claim, but was unable to locate it. § 87(2)(b)

§ 87(2)(b) did not file a notice of claim. (Encl. 11A-B)

#### **Disposition of Summons**

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Disposition of Arrest**

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian Arrest History**

§ 87(2)(b) does not have an arrest history.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Officer CCRB History

PO Champion, PO Earley, PO Rosa, PO Phelan and PO August do not have substantiated CCRB cases. In case # 200301995, the premises entered and/or searched, property damaged and discourtesy word allegations were substantiated against Lt. Miraglia, but no penalty was imposed. (Encl. 1A-2B)

## Conclusions and Recommendations

### Officer Identification

All of the officers acknowledged interacting with either § 87(2)(b) or § 87(2)(b) and Lt. Miraglia identified most of the officers that were present.

§ 87(2)(g)

§ 87(2)(b) stated that PO 4 and PO 5 and a uniformed officer assaulted him. § 87(2)(b) described PO 4 as a tall, clean-shaven, Hispanic male officer approximately 6'0 with a skinny face, black eyes, black straight hair that was combed back and big lips. Lt. Miraglia accurately fits this description. Lt. Miraglia is a 6'2", 200 pound, Italian male with black hair and brown eyes. He has a long skinny face and moderately large lips. During his officer photo viewing, § 87(2)(b) identified Lt. Miraglia as the officer that removed him from the vehicle and body slammed him onto the ground then kicked him throughout his body.

§ 87(2)(b) described PO 5 as a 5'6", skinny, White male with black spiky hair and a pale complexion dressed in plainclothes. PO 6 was described as a White male with blue eyes, spiky hair and a hairline shaped like the letter M. The officer was dressed in uniformed. PO Champion is a 5'11", § 87(2)(b)-old, 180 pound, White male with black hair and brown eyes and PO Earley is a 5'9", § 87(2)(b)-old, 160 pound, White male with black hair and blue eyes. § 87(2)(g)

Although PO Earley denied having physical contact with § 87(2)(b) PO Champion stated that they both removed § 87(2)(b) from his vehicle.

§ 87(2)(g)

### Undisputed Facts

It is undisputed that § 87(2)(b) and § 87(2)(b) evaded officers and that an officer broke a window. It is also undisputed that § 87(2)(b) and § 87(2)(b) were arrested and § 87(2)(b) was later released with a summons.

### Disputed Facts

§ 87(2)(g)

### Civilian Credibility

§ 87(2)(g)

§ 87(2)(b) stated that § 87(2)(b) requested medical assistance at the stationhouse, which § 87(2)(b) denied. § 87(2)(b) stated that § 87(2)(b)'s nose was bleeding, which § 87(2)(b) never alleged occurred. § 87(2)(b) denied resisting arrest; however, § 87(2)(b) admitted that § 87(2)(b) told him that he fought with the officers.

Both § 87(2)(b) and § 87(2)(b) claimed that the officers used excessive force against them, § 87(2)(g) both listed as being in apparently normal condition in the command log. Additionally, § 87(2)(b) claimed that the officers kicked and punched him repeatedly; however, his pre-arraignment screening form and his medical records do not show any injuries indicative of the amount of force alleged. § 87(2)(b) also made no claims of excessive force.



## Officer Credibility

§ 87(2)(g) [REDACTED]  
[REDACTED] With the exception of PO Earley, all of the officers denied breaking a window or hearing glass shatter. The officers also provided different statements regarding which officer removed § 87(2)(b) [REDACTED] from the vehicle and handcuffed him. PO Champion claimed that he and PO Earley opened the passenger side door, but only he had physical contact with § 87(2)(b) [REDACTED] however, PO Early stated that when they arrived at the scene, PO Champion followed § 87(2)(b) [REDACTED] and did not interact with § 87(2)(b) [REDACTED] Lt. Miraglia § 87(2)(g) [REDACTED] admitted to removing § 87(2)(b) [REDACTED] from the vehicle and placing him on the ground. With the assistance of an uniformed officer § 87(2)(b) [REDACTED] was handcuffed and then lifted off the ground.

§ 87(2)(g) [REDACTED] PO August recalled § 87(2)(b) [REDACTED] being taken to the ground by one of the officers, not falling to the ground.

## Determination of Facts

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Allegations

Allegation A: PO David Earley damaged § 87(2)(b) [REDACTED] s and § 87(2)(b) [REDACTED] s property.  
§ 87(2)(b) [REDACTED] claimed that PO 4, who he identified as Lt. Miraglia during his photo viewing, broke the passenger side window with a walkie-talkie. Lt. Miraglia denied the allegation. PO Earley admitted to breaking the driver's side window, in an attempt to gain entrance to the vehicle. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Allegation B: Lt. Daniel Miraglia used physical force against § 87(2)(b) [REDACTED]

Allegation C: PO Brian Champion used physical force against § 87(2)(b) [REDACTED]

Allegation D: PO David Earley used physical force against § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] claimed that Lt. Miraglia grabbed him out of the car and body slammed him onto the ground. Lt. Miraglia and two other officers proceeded to kick him ten times in his back, neck, ribs and chest. Lt. Miraglia then turned § 87(2)(b) [REDACTED] onto his stomach and placed his foot on his neck. Lt. Miraglia admitted to placing § 87(2)(b) [REDACTED] on the ground for safety reasons, but denied kicking him. PO Champion and Lt. Miraglia admitted to having physical contact with § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]  
[REDACTED]

The investigation revealed that PO Champion, PO Earley and Lt. Miraglia all have physical contact with § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Allegation E: An officer threatened § 87(2)(b) [REDACTED] with the use of force.

§ 87(2)(b) [REDACTED] claimed that after he was lifted off the ground, PO 2 (one of the officers that chased § 87(2)(b) [REDACTED]) threatened to hit him with a walkie-talkie if he tried to escape. During his officer photo viewing, § 87(2)(b) [REDACTED] did not identify the officer; § 87(2)(g) [REDACTED]  
[REDACTED]

Allegation F: PO Andre Rosa used physical force against § 87(2)(b)

Allegation G: PO Simon August used physical force against § 87(2)(b)

Allegation H: PO Kevin Phelan used physical force against § 87(2)(b)

§ 87(2)(b) claimed that a number of officers threw him on the ground and began kicking and punching him in the head, ribs and groin area for three to four minutes. PO Rosa, PO August and PO Phelan admitted to having physical contact with § 87(2)(b) but denied hitting him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: